



1

---

## Title IX Coordinator Responsibilities

- Must be called Title IX Coordinator
- Must be identified (with name or title, address, phone, and email) in policy and on website
- Must meet with alleged victims of Title IX Sexual Harassment

FRANCZEK

2

## Title IX Coordinator Responsibilities

- Informs Complainant (CP) of availability of supportive measures and formal complaint process
- Decides whether to “sign” a complaint when the CP doesn’t want to file
- Coordinates implementation of supportive measures
- Ensures effective implementation of remedies
- Monitors ongoing compliance with Title IX

FRANCZEK

3

## Robin’s Report

- Email from Dean
- Robin, a first-year soccer player, reported conduct that occurred against Robin’s friend, Cameron, also a first-year soccer player

FRANCZEK

4

## Robin's Report

- Soccer orientation week
- Park across street from the school
- Two upperclassmen soccer players vs. Cameron

FRANCZEK

5

## Robin's Report

- Verbal harassment
  - Going to violate your mother
  - Want to “smoke” (understood to mean sexual assault)
- Grabbed Cameron by the neck and bent Cameron over; poked Cameron's anus over the clothes

FRANCZEK

6

## Robin's Report

- Coaches saw the incident
  - Laughed at first
  - Noticed Cameron looked shaken
  - Sternly reprimanded upperclassmen in front of Cameron
  - Told Cameron if it happened again to report it
- Nonetheless, incidents kept occurring

FRANCZEK

7

## Robin's Report

- One (same) coach observed later incident; shook head and walked away
- Last day of orientation
  - Hazing ritual
  - Multiple upperclassmen grabbed Cameron and two other rookies
  - Pulled down pants, poked anus with broomstick

FRANCZEK

8



9

**Is the conduct alleged "Title IX Sexual Harassment"?**

Yes - Quid Pro Quo by an Employee

Yes - Hostile Environment

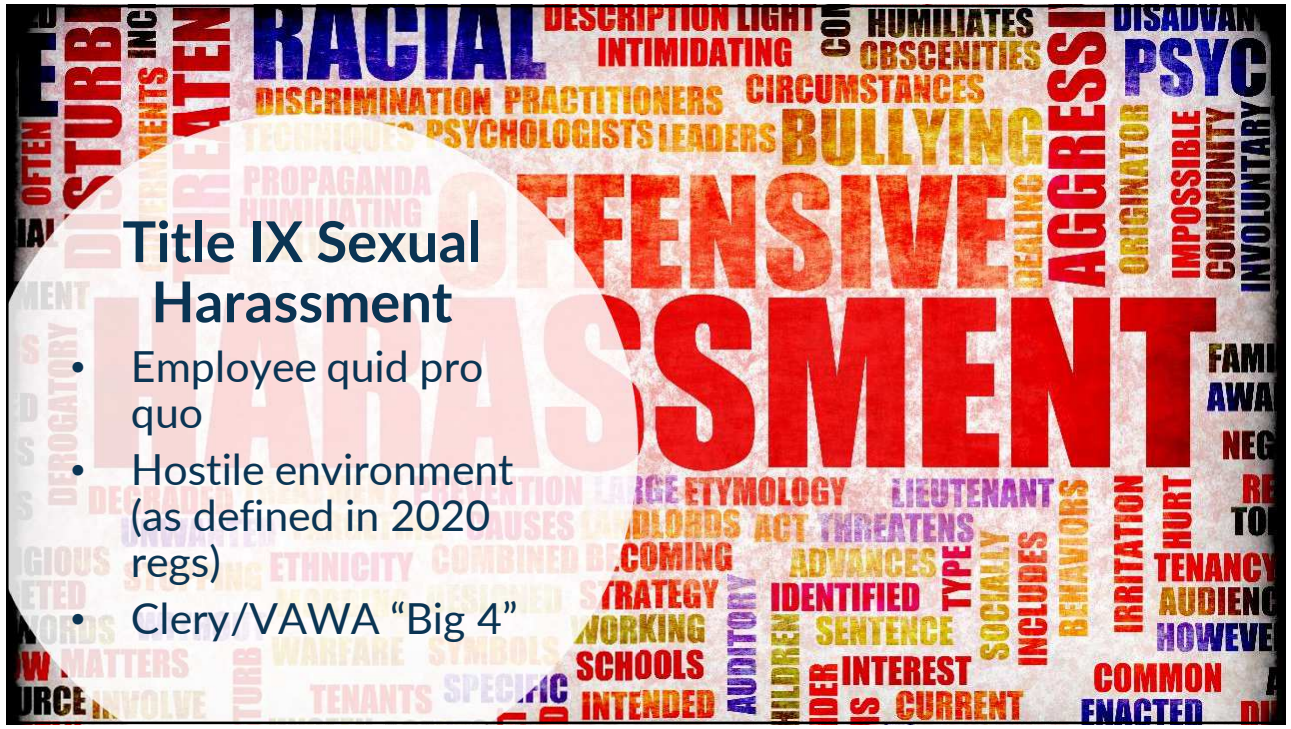
Yes - Sexual Assault

No

Can I get that definition again?

A presentation slide with a dark blue border containing text about Title IX Sexual Harassment. At the bottom center, there is a small grey bar with the text: "Start the presentation to see live content. For screen share software, share the entire screen. Get help at [pollev.com/app](https://pollev.com/app)".

10



## Title IX Sexual Harassment

- Employee quid pro quo
- Hostile environment (as defined in 2020 regs)
- Clery/VAWA “Big 4”

11

## Title IX Quid Pro Quo

<p><b>Definition:</b> An employee of the school conditioning an aid, service, or benefit of the school on an individual’s participation in unwelcome sexual conduct</p> <hr/> <p>Only an employee (not a volunteer, another student, etc.)</p> <hr/> <p>Severity and harm presumed</p>	<p>Quid = Something</p> <hr/> <p>Pro = For</p> <hr/> <p>Quo = Something</p>
--	---

FRANCZEK
franczek.com

12



## Title IX Hostile Environment

- Unwelcome conduct
- determined by a reasonable person to be so
- severe,
- pervasive, and
- objectively offensive
- that it effectively denies a person's equal access to the recipient's education program or activity

13

## VAWA “Big Four”

- Sexual Assault 20 U.S.C. 1092(f)(6)(A)(v)
- Domestic Violence 34 U.S.C. 12291(a)(8)
- Dating Violence 34 U.S.C. 12291(a)(10)
- Stalking 34 U.S.C. 12291(a)(30)

FRANCZEK franczek.com

14

## Sexual Assault under VAWA

- Sexual Assault:
  - Penetration without consent (rape)
  - Fondling without consent
  - Incest
  - Statutory rape

FRANCZEK

15

### If it's not "Title IX Sexual Harassment," what do you do? (best choice)

Tell the dean he can't do anything further because it's not Title IX Sexual Harassment

Tell the dean to consider other policy violations (bullying, code of conduct) at the building level

Tell the dean to follow up with Cameron to seek more information

Ask the dean if she's interested in a new position because you're is about to be free....

Start the presentation to see live content. For screen share software, share the entire screen. Get help at [polllev.com/app](https://polllev.com/app)

16



### Thinking back to the original hypo.... What do you do next?

- Contact Robin to obtain names of upperclass students to pull them from class
- Contact Robin to offer an opportunity to file a formal complaint and supportive measures
- Contact Cameron to offer an opportunity to file a formal complaint and supportive measures

Run and hide as fast as I can!

Start the presentation to see live content. For screen share software, share the entire screen. Get help at [pollev.com/app](https://pollev.com/app)

17

### Title IX Coordinator must promptly, **even if no Formal Complaint is filed:**

- Contact the Title IX Complainant to discuss the availability of “supportive measures”
- Consider the Title IX Complainant’s wishes with respect to supportive measures
- Inform the Title IX Complainant of the availability of supportive measures with or without the filing of a formal complaint
- Explain the process for filing a Formal Complaint

## Initial Response

18

## Cameron's Report

- You tell the Dean to meet with Cameron (**WRITE IT DOWN**)
- Cameron confirms all of the allegations
- Cameron wants the upperclass students removed from the team
- Cameron does not want to file a formal complaint or be named to the upperclass students

FRANCZEK

19

### Can you honor Cameron's confidentiality request?

No, names must always be provided to the Respondent when a Complainant reports Title IX Sexual Harassment

No, because this situation warrants "signing" a formal complaint and Cameron must therefore be named

Yes, because respecting the autonomy and wishes of the Complainant is paramount under the new regulations

None of the above

Start the presentation to see live content. For screen share software, share the entire screen. Get help at [polllev.com/app](https://polllev.com/app)

20

### What Supportive Measure Would You Offer (Order from Best to Worst)

- A mutual no contact order
- Waiver of attendance requirements for soccer
- Counseling
- A unilateral no contact order
- Increased monitoring or supervision
- Removing the upperclass students from classes shared with Cameron

Start the presentation to see live content. For screen share software, share the entire screen. Get help at [pollev.com/app](https://pollev.com/app)

21

## Forms/Notices

### Initial Contact and Meeting with the CP

- Notice to Complainant of Report of Title IX Sexual Harassment (Franczek Notice 1(a))
- Summary of Supportive Measures Meeting with the Title IX Complainant (Franczek Notice 1(b))
- Title IX Formal Complaint (Franczek Form A)

FRANCZEK

22

**You can remove the upperclass students from school during the investigation as an "emergency removal"**

True False

Start the presentation to see live content. For screen share software, share the entire screen. Get help at [pollev.com/app](https://pollev.com/app)

23

## Forms/Notices

### Notice of Emergency Removal

- Notice of Title IX Emergency Removal of Student (Franczek Letter 4(a))
- Notice of Title IX Emergency Removal of Student (Franczek Letter 4(b))

FRANCZEK

24

## Remember State & Federal Law

- Additional process may be required for emergency removal to occur
  - Student discipline – state laws (e.g., long term suspension, expulsion)
  - Disability rights – federal and state law
  - Employee rights – law, policy, agreements

FRANCZEK

25

### **Cameron presents a court order prohibiting the upperclass students from being at school. What do you do?**

Ignore it, because removing the students from school would be punitive or disciplinary, and that's not possible until after a determination is made

Enforce it and do not get involved - this is between Cameron and the upperclass students

Enforce it and tell the upperclass students that they should raise any concerns with the court

Start the presentation to see live content. For screen share software, share the entire screen. Get help at [polllev.com/app](https://polllev.com/app)

26

**Cameron suggests that they do a talking circle to address the conduct. Can this be done?**

- Yes, because the new Title IX regs now clearly allow informal resolution
- Yes, as long as the talking circle facilitator has been trained on Title IX
- No, because Cameron has not filed a formal complaint
- No, because this severe of sexual misconduct can never be addressed through informal resolution

Start the presentation to see live content. For screen share software, share the entire screen. Get help at [pollev.com/app](https://pollev.com/app)

27

**Cameron and the upperclass students reach an agreement in informal resolution. Can the Title IX process ever recommence?**

- Yes, but only if the upperclass students failed to comply with its terms
- Yes, but only for allegations not resolved in informal resolution
- No, because you can only recommence an investigation before a resolution is reached

Start the presentation to see live content. For screen share software, share the entire screen. Get help at [pollev.com/app](https://pollev.com/app)

28

## Forms/Notices

### Informal Resolution Process

Offer of Title IX  
Informal Resolution  
Process  
(Franczek Notice 5(a))

Notice of Closure of  
Title IX Informal  
Resolution Process  
(Franczek Notice 5(b))

FRANCZEK

29

## Back to Robin

- Let's assume Cameron doesn't want to file a complaint....

FRANCZEK

30

### Can Robin file a complaint?

Yes, because Robin's education could have been impacted by the climate of sexual violence on Robin's sports team

No, because Robin would have to have Cameron's permission to file a complaint on Cameron's behalf

No, because there is no allegation of Title IX Sexual Harassment perpetrated against Robin

Start the presentation to see live content. For screen share software, share the entire screen. Get help at [pollev.com/app](https://pollev.com/app)

31

## “Signing a Complaint”

- Consider:
  - Pattern of alleged conduct
  - Involvement of violence, weapons, etc.
  - Seriousness of alleged conduct
  - Age of student harassed
- Title IX Coordinator does not become Complainant or party
- Decision to sign a Formal Complaint (or not?) reviewed for “deliberate indifference”

FRANCZEK

32



## Formal Complaint – Next Steps

- Written notice to all known parties
  - Grievance process
  - Allegations
  - Respondent presumed not responsible
  - Right to advisor
  - Right to inspect/review evidence
  - Notice of provision on false statements

FRANCZEK

33

## Forms/Notices

### Notice of Allegations

Notice of Allegations of Title IX Sexual Harassment by a Complainant (Franczek Notice 2(a))

Notice of Allegations Upon Signing of Formal Complaint by the Title IX Coordinator (Franczek Notice 2(b))

FRANCZEK

34

## Let the investigation begin....

- The Title IX Investigator is ready to investigate
- Must send notice to parties (and, we recommend, to witnesses)

FRANCZEK

35

## Forms/Notices

### Notice of Interview

Notice of Title IX  
Interview or Meeting  
with Title IX Party  
(Franczek Notice 6(a))

Notice of Title IX  
Interview or Meeting  
with Non-Party  
Witness (Franczek  
Notice 6(b))

FRANCZEK

36

## Witness – Devon

- Devon, witness
- Also on the soccer team, upperclass student

FRANCZEK

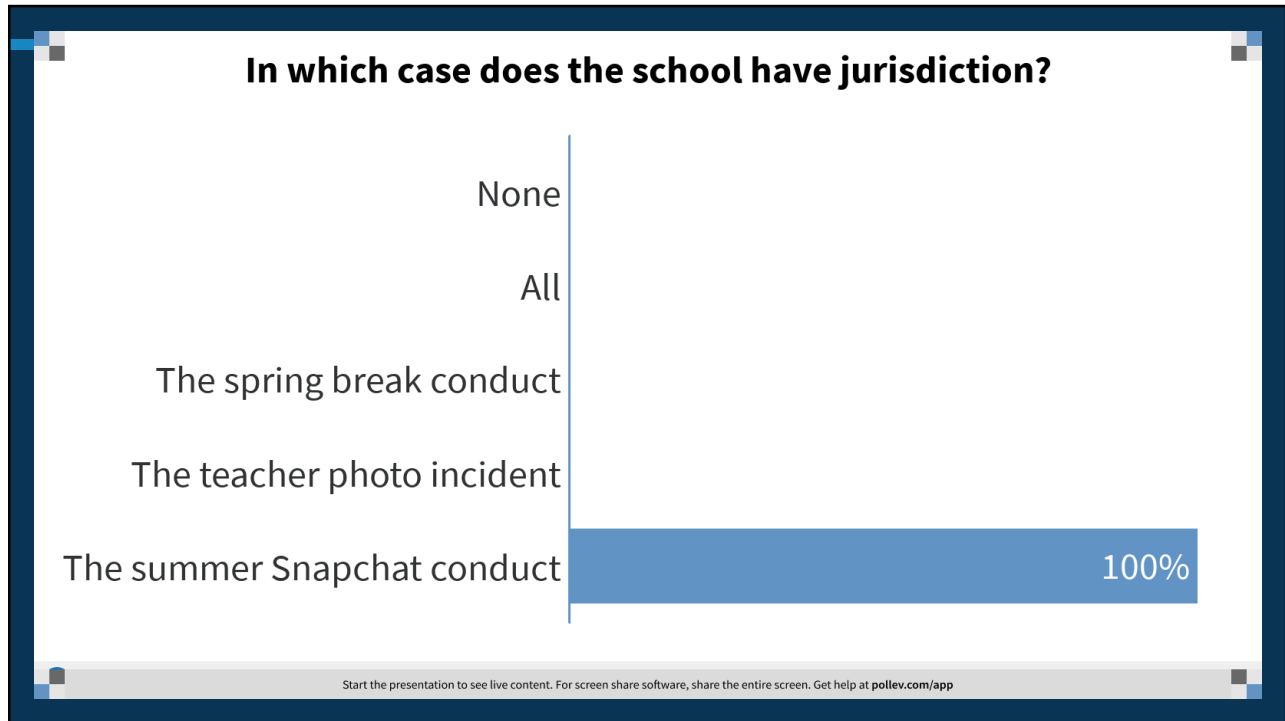
37

## Witness – Devon

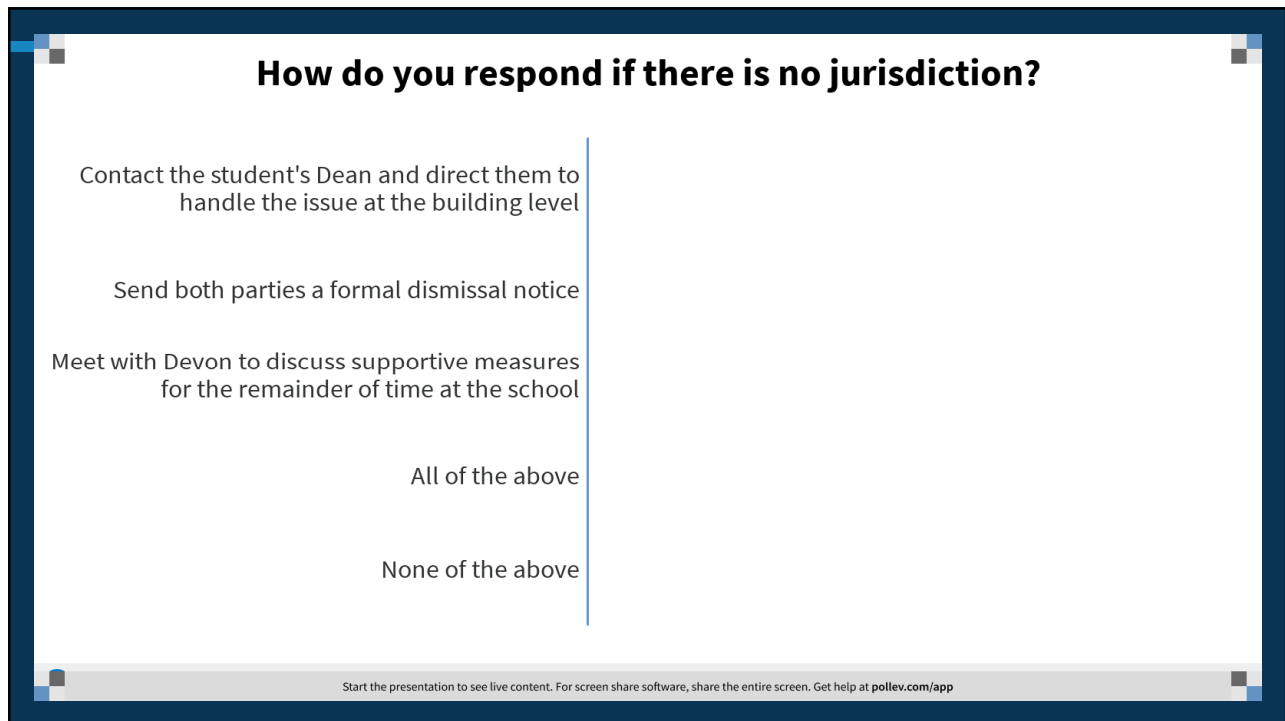
- Sexual assault by classmate on spring break trip last year (abroad)
- Sexual harassment by classmate via Snapchat over the summer (off-campus, not on school tech or hours)
- A teacher asked Devon for a naked photo and Devon shared one; the teacher quit shortly after

FRANCZEK

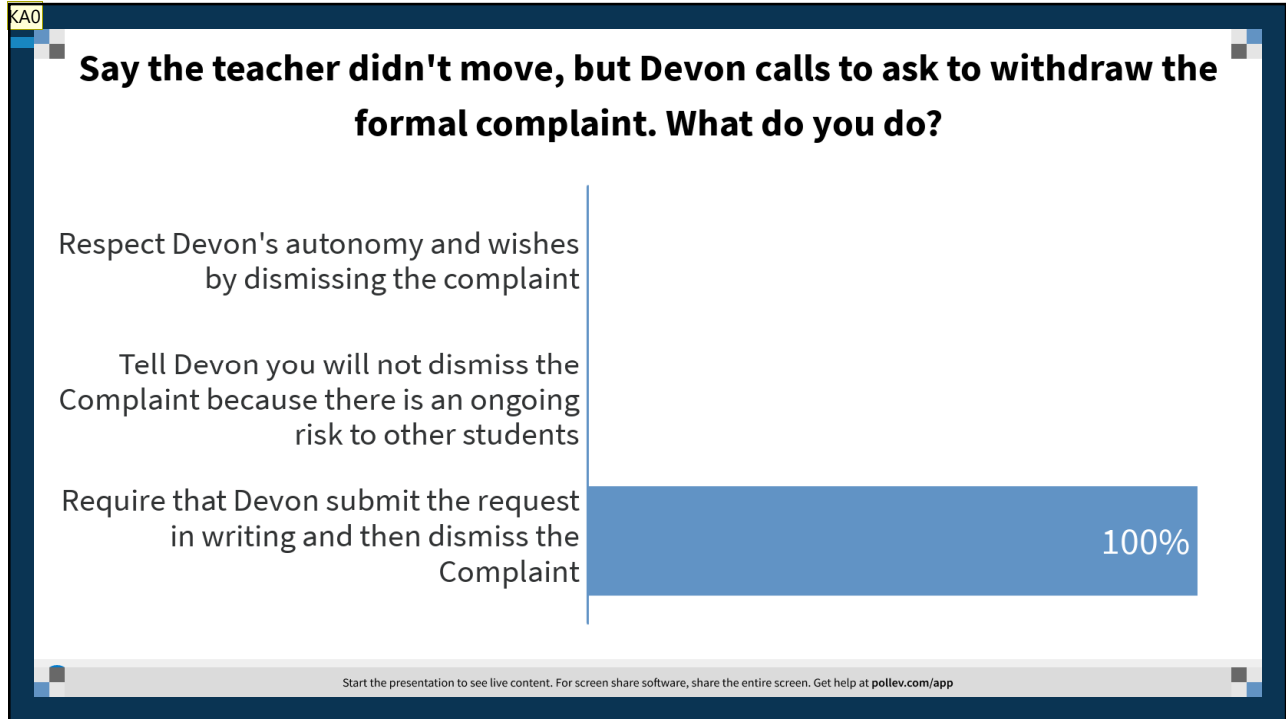
38



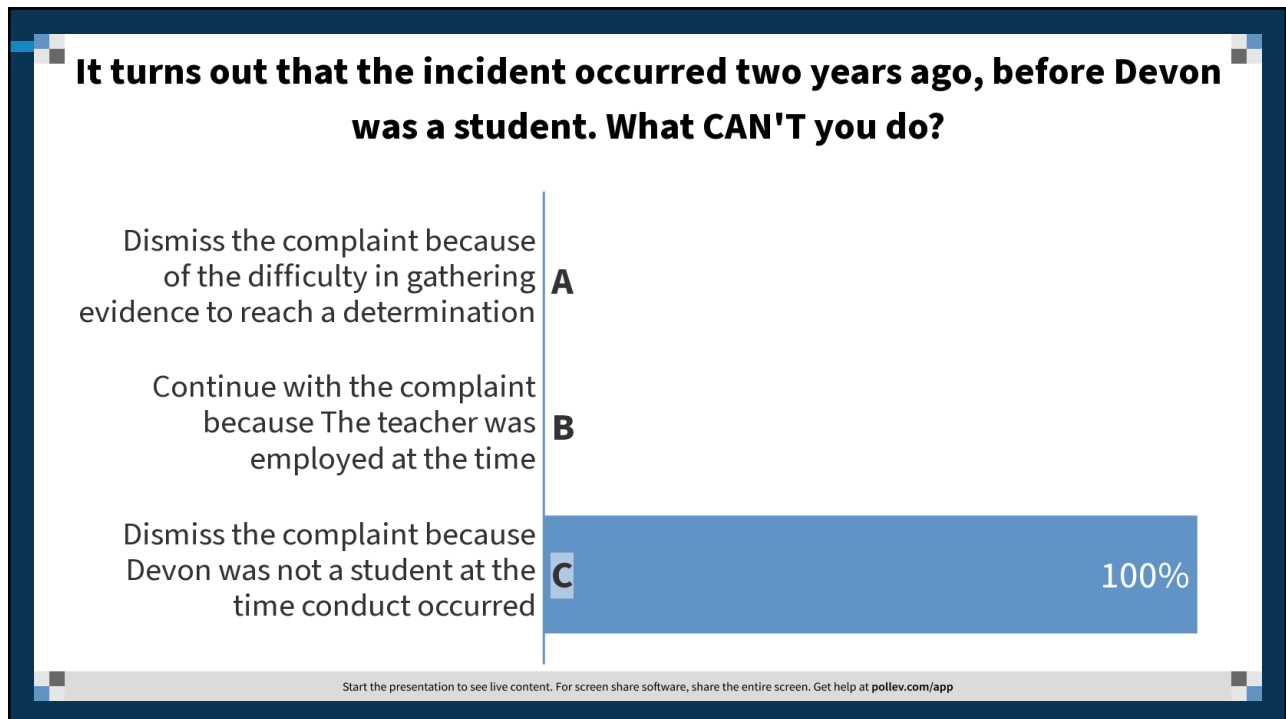
39



40



41



42

## Slide 41

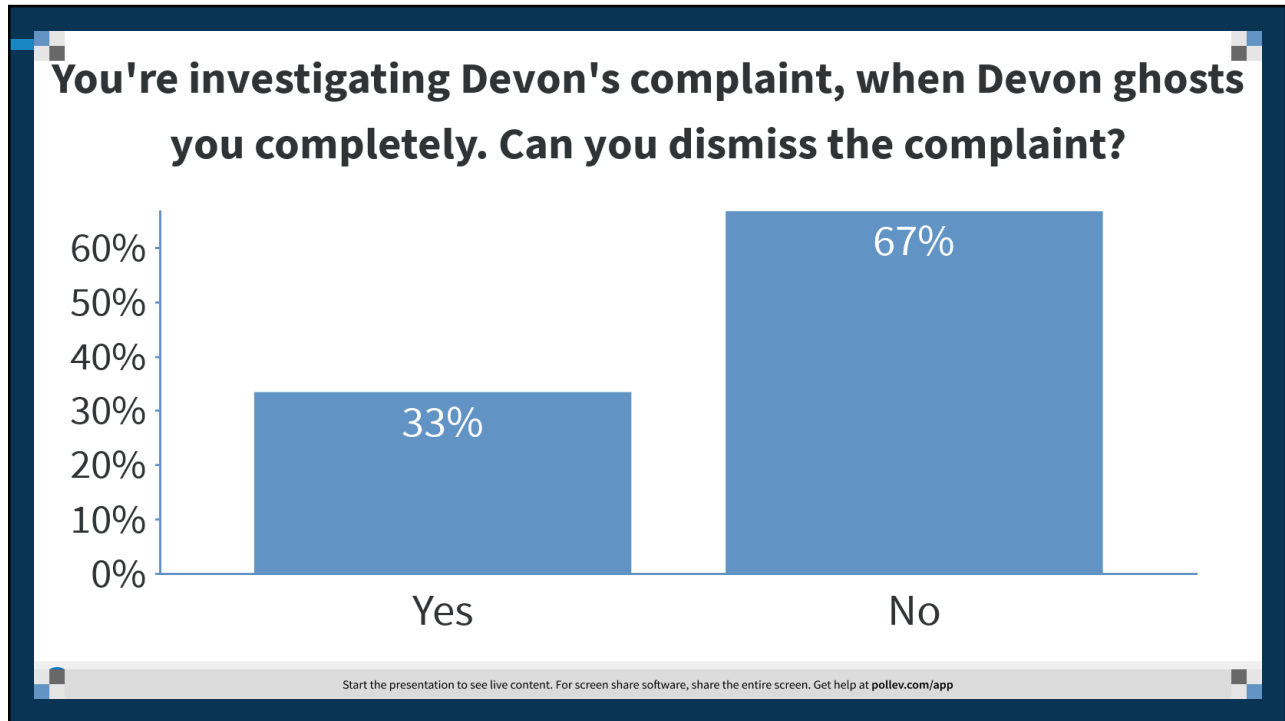
---

**KAO** Some of these polls appear already to be completed. Is there a way to remove the data and have it appear in real time? I've never used Poll Everywhere, so I'm not sure how it works.

Kaitlin Atlas, 2022-08-24T13:27:23.695

**JLO 0** I assumed that refreshing the polls on the presenter's back-end would automatically delete the responses, but if we're switching to Zoom then this won't be an issue.

Jenny V. Lee, 2022-08-24T15:44:57.291



43

## Forms/Notices

### Notice of Dismissal

- Notice of Mandatory Dismissal of Allegations of Title IX Sexual Harassment (Franczek Letter 3(a))
- Notice of Permissive Dismissal of Allegations of Title IX Sexual Harassment (Franczek Letter 3(b))

FRANCZEK

44

## Remember with Devon

- You can remove the teacher while you investigate
  - Administrative leave (can be used with or in lieu of emergency removal)
  - Check your policies/procedures, CBAs, employment contracts, laws, etc.

FRANCZEK

45

## Forms/Notices

### Notice to Advisors

Advisor  
Conduct  
Expectations

FRANCZEK

46



## So the investigation is done....

- Must share evidence with both parties and advisors simultaneously with 10 days to respond before writing the report
  - Review/consider responses
  - Share responses with the other side

FRANCZEK

47

## Forms/Notices

### Sharing of Evidence

Notice of Directly  
Related Evidence  
(Franczek Letter 7(a))

Notice of Other  
Party's Written  
Response to Evidence  
(Franczek Letter 7(b))

FRANCZEK

48

## The investigative report

- Must fairly summarize relevant evidence
- Must be provided to both parties and their advisors simultaneously at least 10 days prior to a hearing (if applicable) or other time of determination
- Transmit report and any party written response(s) to the Decisionmaker

FRANCZEK

49

## Forms/Notices

### Investigative Report

- Title IX Investigative Report Template (Franczek Form B)
- Notice of Investigative Report (Franczek Notice 8(a))
- Notice of Other Party's Written Response (Franczek Notice 8(b))
- Transmittal Cover Letter to Decision-maker at Conclusion of Investigation (Franczek Letter 8(c))

FRANCZEK

50

## Decision

- Decision-maker (“written cross”) (Franczek Notices 9(a)-(e))
- Written determination (Franczek Form C - Written Determination Template)

FRANCZEK

51

## Appeal Notice

- Upon receipt of an appeal, the Title IX Coordinator must notify the other party/parties of the appeal
- Both parties must be given an opportunity to submit a written statement for or against the appeal

(Franczek Notices 11(a) and (b))

FRANCZEK

52

# Bias, Conflicts of Interest, and Other Fairness Concerns

53

## Bias

The Title IX Coordinator must not have a conflict of interest or bias for or against Complainants or Respondents generally or for or against any individual Complainant or Respondent. And that they not prejudge any matter before them.

FRANCZEK

54

## Conflict of Interest

- Flexibility to choose employees or outsource adjudication functions
- No *per se* prohibited conflicts of interest when using school employees or individuals with histories of working in field of sexual violence as decisionmaker
- Caution against using generalizations to identify conflict of interest

FRANCZEK

55

## Pre-Judgment

Tips for avoiding pre-judgment of facts:

- Each case is fact-specific
- Keep an open mind
- Listen to facts presented

FRANCZEK

56

## Sex Stereotypes

- Must not rely on sex stereotypes such as:
  - Women are “asking for it” based on actions or clothing
  - Men cannot be sexually assaulted
  - Women only decide they were assaulted after the fact due to regret or embarrassment
  - Men are more likely to be sexual aggressors
- Consider intersection of sex stereotypes with race, ability, sexuality, and gender identity

FRANCZEK

57

## Recordkeeping/File Maintenance

58

## Recordkeeping Essentials

- Overview of Required Recordkeeping
- File Checklist

FRANCZEK

59

Questions?



60

© Franczek P.C. 2022. These materials are not legal advice. These materials are subject to a LIMITED LICENSE AND COPYRIGHT. These materials are proprietary and are owned and copyrighted by Franczek P.C. As training materials used to train Title IX personnel, these materials must be posted publicly by any organization or entity that purchased training for its Title IX personnel using these materials on that organization or entity's website or, if it has no website, must be made available by any such organization or entity for inspection and review at its offices. Accordingly, Franczek P.C. has granted a LIMITED LICENSE to the organization or entity that lawfully purchased training using these materials (the "LICENSEE") to post these materials on its website or otherwise make them available as required by 34 C.F.R. 106.45(B)(10). The LICENSEE and any party who in any way receives and/or uses these materials agree to accept all terms and conditions and to abide by all provisions of this LIMITED LICENSE. Only the LICENSEE may post these materials on its website, and the materials may be posted only for purposes of review/inspection by the public; they may not be displayed, posted, shared, published, or used for any other purpose. Franczek P.C. does not authorize any other public display, sharing, posting, or publication of these materials by the LICENSEE or any other party and does not authorize any use whatsoever by any party other than the LICENSEE. No party, including the LICENSEE, is authorized to copy, adapt, or otherwise use these materials without explicit written permission from Franczek P.C. No party, including the LICENSEE, is authorized to remove this LIMITED LICENSE AND COPYRIGHT language from any version of these materials or any copy thereof. Should any party, including the LICENSEE, display, post, share, publish, or otherwise use these materials in any manner other than that authorized by this LIMITED LICENSE, Franczek P.C. will exercise all available legal rights and seek all available legal remedies including, but not limited to, directing the party to immediately remove any improperly posted content, cease and desist any unauthorized use, and compensate Franczek P.C. for any unauthorized use to the extent authorized by copyright and other law. These materials may not be used by any party, including the LICENSEE, for any commercial purpose unless expressly authorized in writing by Franczek P.C. No other rights are provided, and all other rights are reserved.